

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

ZERUNDRICK GUY

PLAINTIFF

v.

No. 5:18-cv-194-DPM

TONIA STAFFORD, Police Officer,
Dumas Police Department; GREG
FREEMAN, Police Officer, Dumas,
Police Department; STEPHANIE
ESAW, Jailor, Dumas Police Department;
CARL MCCREEL; ESLIE LEE WARREN;
and DOE, Channel 5 Evening News

DEFENDANTS

ORDER

1. The Court must screen Guy's complaint, as amended. *No 2 & No 12*; 28 U.S.C. § 1915A. Guy claims he was unlawfully arrested and detained and that he's innocent of the crime for which he's now serving a sentence. *No 12*. He also says that Elsie Lee Warren attacked him and that Doe reported false information about him. *Ibid*. He seeks damages and release from prison. *Ibid*.

2. Guy brought his lawsuit under 42 U.S.C. § 1983. His claims against Elsie Lee Warren and Doe must therefore be dismissed because there's no indication that either acted under the color of law. *Hamilton v. Schriro*, 74 F.3d 1545, 1549 (8th Cir. 1996).

3. Guy's claims against Stafford, Freeman, Esaw, and McCree are *Heck*-barred and must be dismissed without prejudice for failing to state a claim at this point. *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). A judgment in Guy's favor would necessarily call into question his state-court conviction; and Guy hasn't alleged that his conviction has been reversed, expunged, or invalidated. *Ibid.* To the extent Guy seeks to challenge his conviction and get out of prison, he can't do so in this § 1983 action. He must file a *habeas* petition. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973).

4. Guy's complaint will be dismissed without prejudice for failing to state a claim. This dismissal counts as a "strike" for purposes of 28 U.S.C. § 1915(g). An *in forma pauperis* appeal from this Order and accompanying Judgment will not be taken in good faith. 28 U.S.C. § 1915(a)(3).

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

27 September 2018